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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,003	04/08/2004	Susanne Rathjen	03/056 NUT CIP 2	9302
38263	7590	10/24/2008		
PROPAT, L.L.C. 425-C SOUTH SHARON AMITY ROAD CHARLOTTE, NC 28211-2841				
EXAMINER				
CHAWLA, JYOTI				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
10/24/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/821,003

Applicant(s)

RATHJEN, SUSANNE

Examiner

JYOTI CHAWLA

Art Unit

1794

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because:
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: _____.
Claim(s) rejected: 8.9.11-15 and 21-25.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☒ Other: See Continuation Sheet.

/KEITH D. HENDRICKS/
Supervisory Patent Examiner, Art Unit 1794

Continuation of 3. NOTE: In the submission of September 26, 2008, the independent claims 8, 21 and 25 have been amended to include added limitations to the product and the method of preparation of sweetener composition.

The amendment to claims 8, 21, and 25 changes the addition of "A sweetener composition comprising (i) a carbohydrate sweetener consisting essentially of a mixture of HFCS 42 and sucrose; and (ii) an effective amount of a binary high intensity sweetener composition comprising acesulfame K and N-[N-(3~3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1-methyl ester, said acesulfame K present in at least 10:1 weight ratio in comparison to said N-[N-(3~3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1-methyl ester. Wherein said sweetener composition imparts a taste profile comparable to HFCS 55," as examined in the final office action dated 07/09/2008 to include additional limitations including limiting the sweetener composition in claims 8, 21 and 25 to include carbohydrate sweeteners in step (i) "HFCS 42 and sucrose alone" and specifying the relative weight ratios of HFCS 42 and Sucrose by claiming "said HFCS 42 and sucrose present in a weight ratio ranging from 20:80 to 80:20; and", which were not examined before. The independent claims further limit the high intensity component of the sweetener as claimed in step (ii) by claiming a composition and method of adding "binary high intensity sweetener composition consisting essentially of acesulfame K and N-[N-(3,3-dimethylbutyl)-L- α -aspartyl]-L-phenylalanine 1-methyl ester alone" and further adding the limitation of "and said binary high intensity sweetener composition provides the entire amount of high intensity sweetener within said sweetener composition". Thus the claims as recited would require new search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's comments filed September 26, 2008 have been considered but have not been found persuasive.

The arguments are in regards to how the newly amended claims differ from the prior art of record, however, the amendments to claims as filed on September 26, 2008 add new previously unexamined limitations and thus have not been entered. Therefore, applicant's arguments discussing the amended claims are moot and the rejections are maintained for reasons of record..

Continuation of 13. Other: If submitted separately applicant's amendments to claim 13, would overcome the rejection under 35 USC 112 for the use of a trademark.